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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

EDDIE REYES CABRAL,

Defendant and Appellant.

B299430

(Los Angeles County  
Super. Ct. No. MA075951)

APPEAL from a judgment of the Superior Court of Los Angeles County, Lisa M. Chung, Judge. Affirmed.

Gary V. Crooks, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

## INTRODUCTION

Eddie Reyes Cabral appeals from a judgment of conviction after the trial court denied his motion to withdraw his no contest plea. We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

### A. *Cabral Attacks His Friend*

According to the probation report, Cabral was having dinner with his friend, Ruth Tarin, in her home. Cabral was drinking heavily, and Tarin urged him to stop. Cabral began to yell, which frightened Tarin, and she tried to leave through the front door. Cabral grabbed Tarin, threw her to the floor, and choked her until she lost consciousness. When Tarin regained consciousness, Cabral held a knife to her throat and said, “I can’t let you live anymore, you have to die.” After ordering Tarin into the bedroom, Cabral punched her in the face, again causing her to lose consciousness. Tarin awoke on the bedroom floor. Cabral told her to write a letter to her children because she was “going to die tonight” and threatened to kill her family if she notified the police. As Tarin began to write the letter, Cabral fled. At some point during the evening, Cabral opened the screen door and kicked in the front door.

Tarin suffered multiple bruises, redness to her neck, and a laceration on her right knee. She sought medical treatment for severe body pain and headaches.

B. *The People Charge Cabral with Multiple Felonies, and Cabral Asks for New Appointed Counsel*

The People charged Cabral with assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)), battery with serious bodily injury inflicted (*id.*, § 243, subd. (d)), making a criminal threat (*id.*, § 422, subd. (a)), and vandalism (*id.*, § 594, subd. (a)). The People alleged as to the first three counts that Cabral personally used a deadly or dangerous weapon (a knife) in the commission of the offenses (*id.*, § 12022, subd. (b)(1)) and as to the first two counts that he personally inflicted great bodily injury on Tarin (*id.*, § 12022.7, subd. (a)). The People further alleged Cabral had two prior convictions for felonies that were serious felonies within the meaning of Penal Code section 667, subdivision (a)(1), and two serious or violent felonies within the meaning of the three strikes law (Pen. Code, §§ 667, subds. (b)-(j), 1170.12). Cabral pleaded not guilty and denied the allegations.

Before the preliminary hearing commenced, Cabral made a motion under *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*) to replace his appointed counsel. The trial court denied the motion.

C. *Cabral Pleads No Contest and Admits the Allegations*

After Cabral rejected the prosecutor's offer of 12 years in prison, the court proceeded with the preliminary hearing, and the prosecutor called Tarin to testify. Before Tarin began to testify, however, counsel for Cabral asked the court to place the matter on "second call" to allow counsel and Cabral to discuss the prosecutor's 12-year offer. The court asked if Cabral needed more time to consider the offer. Cabral said he would "only do nine

years out of it.” The court stopped the preliminary hearing and advised Cabral to speak with his attorney.

When the hearing reconvened, Cabral pleaded no contest to assault with a deadly weapon and admitted he personally used a deadly or dangerous weapon in the commission of the offense, personally inflicted great bodily injury on Tarin, and had a prior serious or violent felony conviction within the meaning of the three strikes law. The plea agreement provided that the trial court would sentence Cabral to a prison term of 12 years and dismiss the remaining counts and allegations.

Before entering his plea, Cabral was advised of and waived his constitutional rights orally and in writing,<sup>1</sup> and he acknowledged he understood the consequences of his plea and admissions. The trial court asked Cabral, “Did you read [the waiver of rights] form, or did your attorney read it to you?” Cabral answered, “Yes.” The court asked, “Did you understand everything on the form including all of your constitutional rights and consequences of this plea?” Cabral answered, “Yes.” The court asked, “Did you have enough time to talk to your attorney about the waiver form, your case, and any possible defenses you might have?” Cabral answered, “Yes.” The court asked, “Are these your initials on the right-hand side of the form and your signature on the second-to-last page?” Cabral answered, “Yes.” The court asked, “You understand that by signing the form, you are giving up each and every one of the constitutional rights listed on the form and subjecting yourself to the consequences of your plea?” Cabral answered, “Yes.” The court advised Cabral,

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<sup>1</sup> Cabral initialed the pertinent boxes on a form titled “Plea Form, with Explanations and Waiver of Rights—Felony,” which he and his counsel both signed.

“You are entering a plea to a felony charge today, which is a strike, and you are admitting a prior strike, admitting a great bodily injury allegation, and admitting personal use of a deadly and dangerous weapon.” The court then asked, “Are you doing that freely and voluntarily because you think it’s in your best interest to do so?” Cabral replied, “Yes.” The court asked, “Other than what’s been said just now on the record about this agreement, has anyone made any other promises to you or tried to force you or threaten you or someone close to you to get you to plead guilty or no contest to this charge?” Cabral answered, “No.”

Before the court entered Cabral’s no contest plea, the court asked him two more times whether he had “any questions about anything” he had been told. Each time, Cabral replied, “No.” The court also confirmed with Cabral he understood “the rights [he] was giving up” and “the consequence [he will] be facing.” The court stated Cabral “has read, understood, and executed the waiver form and finds that [he] has expressly, knowingly, and intelligently waived his constitutional rights. The court finds that [Cabral’s] plea and admissions are freely and voluntary made with an understanding of the nature and consequences thereof, and there is a factual basis for the plea, and the admissions are based on the reports.” The court entered Cabral’s no contest plea.

D. *The Trial Court Denies Cabral's Request To Withdraw His Plea*

At the outset of the sentencing hearing, Cabral made an oral motion to withdraw his plea. Cabral told the trial court he was on medication and explained, "I didn't know what I was doing at the time, and [counsel] was giving me some paperwork to sign. He wrote an 'X' and I had to sign them. Because I didn't know what it read or anything. I was trying to get my psychiatrist to write a letter saying I was out of my medication for almost over a week when I pled. And . . . now that I am medicated, I thought I made a mistake." Counsel for Cabral told the trial court that he read and explained the contents of the waiver form to Cabral and that he "walked through" and explained the boxes that did and did not apply to him.

The trial court denied Cabral's motion to withdraw his plea. The court found that Cabral's conclusory statement was uncorroborated and that he had failed to establish good cause to withdraw his plea.

E. *The Trial Court Sentences Cabral, Who Appeals and Obtains a Certificate of Probable Cause*

After denying Cabral's motion to withdraw his plea, the trial court sentenced him in accordance with the plea agreement to a state prison term of 12 years and dismissed the remaining counts and allegations. Cabral filed a timely notice of appeal, challenging the court's denial of his motion to withdraw his plea, his sentence, or other matters occurring after he entered his plea. The trial court granted Cabral's request for a certificate of probable cause.

## DISCUSSION

We appointed counsel to represent Cabral in this appeal. After reviewing the record, counsel filed an opening brief raising no issues. On January 2, 2020 we gave Cabral notice he had 30 days to submit a brief or letter raising any grounds of appeal, contentions, or arguments he wanted us to consider.

On February 24, 2020 we received an 11-page handwritten brief challenging the denial of his motion to withdraw his plea on multiple grounds. In particular, Cabral argues (1) his attorney did not advise him of the nature of the charges and any “favorable evidence”; (2) the evidence was insufficient to support a conviction for assault with a deadly weapon because Cabral did not have a knife in his possession when he was arrested, and his attorney was ineffective because he did not move to dismiss that count; (3) the trial court violated the plea agreement by sentencing him as a second strike offender; (4) his convictions for assault with a deadly weapon and “assault with force likely to cause great bodily injury” violate Penal Code sections 654 and 954 because they are two convictions for the same offense; (5) the trial court erred in failing to exercise its discretion to strike the five-year enhancement under Penal Code section 667, subdivision (a)(1); and (6) the trial court erred in applying a three-year enhancement for great bodily injury to Cabral’s conviction for assault with a deadly weapon because it was an element of that offense. We have examined the record and are satisfied that appellate counsel for Cabral has complied with his responsibilities and that there are no arguable issues. (See *Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746];

*People v. Kelly* (2006) 40 Cal.4th 106, 118-119; *People v. Wende* (1979) 25 Cal.3d 436, 441-442.)

A. *The Trial Court Did Not Abuse Its Discretion in Denying Cabral's Motion To Withdraw His Plea*

At any time before judgment, the trial court for good cause may allow a defendant to withdraw his or her guilty or no contest plea. (Pen. Code, § 1018; *People v. Archer* (2014) 230 Cal.App.4th 693, 702.) To establish good cause, “the defendant must show by clear and convincing evidence that he or she was operating under mistake, ignorance, or any other factor overcoming the exercise of his or her free judgment, including inadvertence, fraud, or duress.” (*Archer*, at p. 702.) “The defendant may not withdraw a plea because the defendant has changed his or her mind.” (*Ibid.*)

““When a defendant is represented by counsel, the grant or denial of an application to withdraw a plea is purely within the discretion of the trial court after consideration of all factors necessary to bring about a just result. [Citations.] On appeal, the trial court’s decision will be upheld unless there is a clear showing of abuse of discretion.” . . . “Guilty pleas resulting from a bargain should not be set aside lightly and finality of proceedings should be encouraged.”” (*People v. Nocelotl* (2012) 211 Cal.App.4th 1091, 1096; accord, *People v. Alexander* (2015) 233 Cal.App.4th 313, 318.)

The trial court did not abuse its discretion in denying Cabral’s motion to withdraw his plea. At the plea hearing, Cabral never claimed that he was induced into entering a plea agreement or that the prosecutor misrepresented the terms of the plea. Cabral did not claim the case against him did not have a factual basis or was brought in bad faith. Although Cabral



initially balked at the proposed 12-year sentence, the trial court advised him three times before the court entered his plea that his aggregate state prison sentence would be 12 years. Each time Cabral stated he understood and agreed to the sentence. Cabral also initialed the box on the waiver of rights form indicating that, if he pleaded guilty or no contest to the charge and admitted the agreed-upon allegations, he would receive a 12-year sentence. And Cabral did not dispute he faced a maximum sentence of 35 years to life if found guilty following a trial.

Although Cabral initially resisted admitting the allegations he inflicted great bodily injury and used a deadly or dangerous weapon,<sup>2</sup> he ultimately admitted them. After giving Cabral additional time to speak with his attorney, the court resumed the hearing and said to Cabral, “Again, I don’t want you admitting things if they are not true; however, based on the deal that the People are giving you, they are requesting that you admit these allegations. So again, I want to make sure: Are you admitting the great bodily injury allegation?” Cabral answered, “Yes.” The

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<sup>2</sup> The trial court asked Cabral, “Do you also admit in this case you personally inflicted great bodily injury on [Tarin] within the meaning of Penal Code section 12022.7(a)?” Cabral answered, “No contest on that.” The court responded, “Do you admit that though?” Cabral said, “Pardon me?” The court again asked, “Do you admit that allegation to be true? If you have any questions, speak to your attorney, please.” Cabral answered, “Yes. I’ll admit it even though—” The court stated, “Thank you. Do you admit that you personally used a dangerous and deadly weapon, in this case a knife, within the meaning of Penal Code section 12022(b)(1)?” Cabral answered, “No.” The court immediately took a break in the proceeding to allow Cabral to speak with his attorney.

court asked, “And admitting the personal use of a deadly and dangerous weapon [allegation]? Cabral answered, “Yes. Yes.”

In moving to withdraw his plea, Cabral asserted that, at the time of the plea hearing, he did not know what he was doing or understand the waiver of rights form because he was not taking his medication. Cabral, however, produced no corroborating evidence, and the trial court disbelieved him. And counsel for Cabral told the court he had reviewed the waiver of rights form with Cabral and explained it to him. The record fully supports the trial court’s finding that Cabral made a rational and voluntary choice when he accepted the plea agreement.

Finally, the record does not support Cabral’s contention that, prior to entering his plea, his attorney did not advise him of the nature of the charges against him and any “favorable evidence.” Cabral made similar assertions about his attorney’s representation during the hearing on his *Marsden* motion. After discussing those concerns with the court and listening to counsel for Cabral’s account of their meetings, Cabral decided not to replace his attorney, and the court denied the *Marsden* motion.

B. *Cabral’s Challenge to the Sufficiency of the Evidence To Support His Conviction Is Not Cognizable in This Appeal*

Because Cabral pleaded no contest, we cannot consider in this appeal Cabral’s assertions that there was insufficient evidence Cabral assaulted Tarin with a deadly or dangerous weapon or that his attorney should have moved to dismiss that count. “[W]hen a defendant pleads guilty or no contest and is convicted without a trial, only limited issues are cognizable on appeal. A guilty plea admits every element of the charged offense

and constitutes a conviction [citations], and consequently issues that concern the determination of guilt or innocence are not cognizable. [Citations.] Instead, appellate review is limited to issues that concern the ‘jurisdiction of the court or the legality of the proceedings, including the constitutional validity of the plea.’” (*In re Chavez* (2003) 30 Cal.4th 643, 649.) “‘The issuance of a certificate of probable cause pursuant to [Penal Code] section 1237.5 does not operate to expand the grounds upon which an appeal may be taken as that section relates only to the “procedure in perfecting an appeal from a judgment based on a plea of guilty.”’” (*People v. Voit* (2011) 200 Cal.App.4th 1353, 1364; see *People v. Palmer* (2013) 58 Cal.4th 110, 114 “[u]nder [Penal Code] section 1237.5, a defendant may appeal from a conviction on a plea of guilty or no contest only on grounds going to the legality of the proceedings; such a plea precludes appellate consideration of issues related to guilt or innocence, including the sufficiency of the evidence to support the conviction”]; *People v. Kaanehe* (1977) 19 Cal.3d 1, 9 “[o]btaining a certificate of probable cause does not make cognizable those issues which have been waived by a plea of guilty”].)

C. *The Trial Court Did Not Violate the Plea Agreement by Sentencing Cabral as a Second-strike Offender*

The People alleged Cabral had two prior convictions for serious or violent felonies within the meaning of the three strikes law: A 1983 conviction for burglary and a 1977 conviction for assault with intent to commit murder in violation of Penal Code section 217, a statute the Legislature repealed in 1980. (Stats. 1980, ch. 300, § 2.)

As part of his negotiated no contest plea to assault with a deadly weapon, Cabral admitted the 1983 burglary conviction as a prior conviction for a serious or violent felony. As a result, the court sentenced Cabral on his conviction for assault with a deadly weapon to the upper term of four years, doubled to eight years under the three strikes law, plus one year for the weapon enhancement under Penal Code section 12022, subdivision (b)(1), and three years for the great bodily injury enhancement under Penal Code section 12022.7, subdivision (a), for a total prison term of 12 years. The trial court properly sentenced Cabral under the law and in accordance with the plea agreement.

D. *Cabral's Remaining Arguments Are Not Only Not Cognizable, They Are Factually or Legally Incorrect*

Cabral asserts Penal Code section 654 and 954 preclude him from suffering convictions for both assault with a deadly weapon and “assault with force likely to cause great bodily injury” because they are convictions for the same offense. Cabral, however, was not convicted of assault with force likely to produce great bodily injury in this case.

Cabral also contends the trial court erred in failing to exercise its discretion to strike the enhancement under Penal Code section 667, subdivision (a)(1). The court, however, did not impose this enhancement; the court dismissed it on the People’s motion as part of the plea agreement.

Finally, Cabral argues the trial court erred in imposing the three-year enhancement for great bodily injury because great bodily injury is an element of the offense of assault with a deadly weapon. It is not. Penal Code section 245, subdivision (a)(1), provides: “Any person who commits an assault upon the person

of another with a deadly weapon or instrument other than a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.” The great bodily injury enhancement of Penal Code section 12022.7, subdivision (a) provides: “Any person who personally inflicts great bodily injury on any person other than an accomplice in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for three years.” A defendant may commit an assault with a deadly weapon without making any physical contact, let alone inflicting great bodily injury. In any event, because Cabral pleaded no contest in exchange for a 12-year prison term, thus avoiding a potentially harsher sentence, he cannot raise this argument on appeal. (See *People v. Hester* (2000) 22 Cal.4th 290, 295 [“defendants are estopped from complaining of sentences to which they agreed”]; *In re Travis J.* (2013) 222 Cal.App.4th 187, 198 [a defendant “may not seek to improve, on appeal, a bargain he struck in the trial court”].)

## **DISPOSITION**

The judgment is affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J.

FEUER, J.